IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11044 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAY AMBE EDUCATION TRUST

Versus

GUJ SECONDARY EDUCATION BOARD

Appearance:

1. Special Civil Application No. 11044 of 1993

MR MR ANAND for Petitioner No. 1

MR AD OZA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 27/10/2004

ORAL JUDGEMENT

#. In this petition filed under Article 226 of the

Constitution of India, the petitioner has challenged the legality and validity of the order passed by the State Government dated 15.6.1993 by which the State Government purportedly exercised the powers under Section 48 of the Gujarat Secondary Education Act ("the Act" for short) and has cancelled the recognition / registration of the secondary school run by the petitioner trust with effect from June 1992.

#. The petitioner trust was granted recognition to run secondary school at village Longdi, Taluka Mahuva, District Bhavnagar by order dated 26.6.1992 and subsequently, on the basis of the order passed by the State Government, the Gujarat Secondary Education Board, Gandhinagar ("the Board" for short) has passed a consequential order dated 26.11.1992 to register the school of the petitioner trust, as, ultimately in view of the provisions of the Act, powers to grant recognition and register the school vest with the Board.

#. It appears from the record and the order dated 15.6.1993 that some report was submitted by the District Education Officer, Bhavnagar on 22.2.1993 and on the basis of the said report, the State Government has cancelled recognition by order dated 15.6.1993. The said order is challenged by the petitioner in the present petition.

#. Mr.Dipak C. Raval for Mr.M.R.Anand, learned advocate appearing on behalf of the petitioner, has vehemently submitted that the impugned order passed by the State Government in cancelling recognition of the secondary school run by the petitioner trust is without any jurisdiction and it is not stated by the State Government under which provisions of law, recognition is being cancelled by the State Government. He further submitted that, in fact, powers to cancel recognition / registration of secondary school vest with the Board, that too after giving opportunity to the concerned trust and school. He further submitted that, at the most the State Government has powers to issue direction under Section 48 of the Act and that too direction can be issued to the Board, but, straightaway, the State Government has no powers to cancel recognition / registration.

#. This Court has admitted the present petition in 1993 and has also granted interim relief staying further implementation and operation of the impugned order dated 15.6.1993 and that is how the school is running since 1993 and even today also, the school is running and is

having Standards 8, 9 and 10. Affidavit-in-reply is filed to the petition. However, from the affidavit-in-reply, it is not clear under which provisions of law, the State Government has cancelled recognition / registration. Considering the provisions of the Act, powers to grant recognition vest with the Board and even registration powers are also with the Board and only power which is available with the State Government is the power to issue direction under Section 48 of the Act and that too to the Board. Considering the provisions of law and the order dated 15.6.1993, the impugned order dated 15.6.1993 is without any jurisdiction. Even, before passing the impugned order dated 15.6.1993 it appears that no opportunity of hearing has been given to the petitioner trust and even the report dated 22.2.1993 submitted by the District Education Officer, Bhavnagar which is relied upon by the State Government while cancelling recognition is not served upon the petitioner trust. Hence, the impugned order dated 15.6.1993 is in violation of the principles of natural justice and on that ground also, the impugned order dated 15.6.1993 is required to be quashed and set aside.

#. For the reasons stated above, this petition is allowed. The impugned order dated 15.6.1993 passed by the State Government is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)